IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO.769 OF 2005
IN
CHAMBER SUMMONS NO.452 OF 2005
IN
SUIT NO.76 OF 2005

M/s.Rizvi Builders
having its place of business at,
Rizvi House, 1st Floor, Hill Road,
Bandra (West), Mumbai- 400 050,
through its Sole Proprietor,
Mr.Akhtar Hasan Rizvi, sonof
Manjoor Hasan, aged about 61 years,
Indian Inhabitant, residing at
Meena Mahal, near Almeida
Park,Bandra (West), Mumbai-400050. .. Appellants
(Orig. Plaintiffs)

v/s.

1. Goswami Shrimad Gokulnathji
Maharaj Hindu Undivided Family,
through its Karta and Manager,
Shri Hariraiji Krishnajivanji Maharaj.
Aged about 71 years, residing
temporarily at Mota Mandir, 3rd Bhoiwada,
Bhuleshwar, Mumbai-400 002 and
permanently at Shri Balkrishnalalji Haveli,
Limbda Chowk, Opp.Pipadiya Nagar,
Mangrol Road, Keshod District,
Junagadh, Gujarat.

2. Goswami Shri Madhusudanlal alias
Madhusudan Krishnachandraji, son
of late Goswami Krishnachandraji
Krishnajivanji, aged about 50 years,
Indian inhabitant, residing at Krishna
Niketan, 16 Ekambareshwar,
Agraharam, Park Town, Chennai-3

3. Goswami Shri Shyam Madhusudanlalji,
son of said Goswami Shri Madhusudanlalji
Krishnachandraji, aged about 32 years,
Indian Inhabitant, residing at Krishna
Niketan, 16 Ekambareshwar, Agraharam,
Park Town, Chennai-3.

4. Goswami Shri Deepak Madhusudanlalji,
son of said Goswami Shri Madhusudanlalji
Krishnachandraji, aged about 28 years,
Indian Inhabitant, residing at Krishna
Niketan, 16 Ekambareshwar, Agraharam,
Park Town, Chennai-3.

5. Shri Krishnakant Krishnachandraji
Goswami, son of late Goswami Krishnachandraji
Krishnachandraji, aged about 48 years,
Indian Inhabitant, residing at Padmavati
Residence, 5/9/580, Flat No.8, Gun
Foundry, Hyderabad- 500001.

6. Smt.Rama G.Goswami alias Goswami
Rama Giirdharji, widow of late Goswami
Girdharlalji Krishnachandraji and
daughter-in-law of late Goswami
Krishnachandraji Krishnajivanji,
aged about 40 years,
Indian Inhabitant, residing at A Wing,
Flat No.001, Kokil Kunj, M.G. `X'
Road No.4, behind Patel Nagar,
Kandivali (W), Mumbai.

7. Shri Goswami Pankaj J., alias
Goswami Shri Purshottamlal, or
Purushottamlal, also known as
Pankaj Kumar Jivneshji, son of
Goswami Shri Jivaneshji
Krishnajivanji, aged about 54 years,
Indian Inhabitant, residing at Vallabh
Bungalow, Opp.Yash Complex,
Behind Rambha Maavaadi, Rajkot
Gujarat.

8. Shri Lalitnath Goswami alias Lalit Tribhangiji J., alias Goswami Shri Lalitji Jivaneshji, alias Lalitnath Jeevaneshji, son of Jivaneshji Krishnajivanji, and grandson of Krishnajivanji Gokulnathji Maharaj, aged about 47 years, Indian Inhabitant, residing at Mathuresh Bhuvan, Station Plot, Near Railway Station, Bilkha-Junagadh, Gujarat.

9. Smt.Satyabhama Rehi @ Sumitra, alias Satyabhama Ramesh Rehi, daughter of Goswami Jivaneshji Krishnajivanji, aged about 55 years, Indian Inhabitant, residing at 77-A, Yamuna Tat, Saru Section Road, Near Jamnagar Dairy, Jamnagar, Gujarat.

10. Smt.Charu Rehi, or Charulata Rehi alias Charulata Gokulesh Rehi, daughter of Goswami Jivaneshji Krishnajivanji, aged about 56 years, Indian Inhabitant, residing at 2, Gulab Nagar, Yamuna Kunj, Raiya Road, Rajkot, Gujarat-360 001.

11. Smt.Chandrika Sharma, alias Chandrika Kamalnath Sharma, daughter of Goswami Jivaneshji Krishnajivanji, aged about 53 years, Indian Inhabitant, residing at 8263, B-11, Vasant Kunj, New Delhi – 110070.

12. Smt.Kalindi R. Karanji, alias Kalindibetijee Karanji, daughter of Goswami Jivaneshji Krishnajivanji, aged about 49 years, Indian Inhabitant, residing at “Snehkunj”, 68, Suman Sajni So. Purvi Nagar, Ghodasar Canal Road, Ahmedabad.

13. Shri Hariraiji Krishnajivanji Goswami, son of Goswami Krishnajivanji Gokulnathji Maharaj, aged about

68 years, Indian Inhabitant, residing at Shri Balkrishna Niwas, Limbda Chowk, Keshod, Jilla Junagadh, Gujarat

14. Smt.Mridulaji R. Chakrovarty, daughter of Goswami Hariraiji Krishnajivanji, aged about 52 years, Indian inhabitant, residing at Hanumanghatti, Bhatton Ki Bhagiya, Gwalior, Madhya Pradesh

15. Shri Rishikesh H. Goswami, alias Goswami Rushikeshji Harirajji, son of Goswami Hariraiji Krishnajivanji, aged about 50 years, Indian Inhabitant, residnig at Navi Haveli, Jamunavav Road, Dhoraji, Jilla Junagadh, Gujarat.

16. Shri Rajiv Rishikesh Goswami, son of Rishikeshji Hariraiji Goswami, aged about 30 years, Indian Inhabitant, residing at Mota Mandir, 3rd Bhoiwada, Bhuleshwar, Mumbai- 400 002.

17. Smt.Renu Venkat S., daughter of Rishikeshji Hariraiji Goswami, aged about 28 years, Indian Inhabitant, residing at Ubramangam, Appla Bhattla, Airforce Road, Bhovali, Nainital, Uttaranchal Pradesh.

18. Smt.Rachna Shashidhar Manchi, daughter of Rishikeshji Hariraiji Goswami, aged about 26 years, Indian Inhabitant, residing at Veerugam Bakkam, 16/12, Ratna Nagar, Chennai

19. Shri Ravi Rishikeshji Goswami, son of Rishikeshji Hariraiji Goswami, aged about 19 years, Indian Inhabitant, residing at Mota Mandir, 3rd Bhoiwada, Bhuleshwar, Mumbai-400 002

20. Goswami Shri Murlimanoharji Vrajadhishji, son of Vrajadhishji Krishnajivani Goswami, aged about

55 years, Indian Inhabitant,
residing at Mota Mandir, 3rd Bhoiwada,
Bhuleshwar, Mumbai-400002.

21. Goswami Shakuntaladevi Murlimanohar
wife of said Murlimanohar Vrajadhishji
Goswami, aged about 52 years, Indian
Inhabitant, residing at Mota Mandir,
3rd Bhoiwada, Bhuleshwar,
Mumbai-400002.

22. Goswami Gopish Murlimanohar,
son of Murlimanoharji Vrajadhishji
Goswami, aged about 33 years,
Indian Inhabitant, residing at Mota
Mandir, 3rd Bhoiwada, Bhuleshwar,
Mumbai-400002.

23. Smt.Darshana Brijesh Goswami
daughter of
Murlimanoharji Vrajadhishji
Goswami, aged about 31 years,
Indian Inhabitant, residing at Mota
Mandir, 3rd Bhoiwada, Bhuleshwar,
Mumbai-400002.

24. Smt.Bharati Padmanavh Sharma,
daughter of
Murlimanoharji Vrajadhishji
Goswami, aged about 30 years,
Indian Inhabitant, residing at Mota
Mandir, 3rd Bhoiwada, Bhuleshwar,
Mumbai-400002.

25. Goswami Shri Nrityogopalji, alias
Nrutyagopalji Krishnajivani Maharaj,
son of Goswami Krishnajivanji Gokulnathji
Maharaj, aged about 68 years,
Indian Inhabitant, residing at Govind
Bhuvan, Mota Mandir, 3rd Bhoiwada,,
Bhuleshwar, Mumbai-400002.

26. Goswami Smt.Beena N. Goswami, alias
Bina Nrityagopalji Goswami,
wife of Goswami Nrityogopalji Krishnajivanji
Maharaj, aged about 63 years,

Indian Inhabitant, residing at Govind
Bhuvan, Mota Mandir,
3rd Bhoiwada, Bhuleshwar,
Mumbai-400002.

27. Shri Manoj Nrityogopalji Goswami,
alias Manoj N.Goswami, son of
Goswami Nrityogopalji Krishnajivanji,
Maharaj, aged about 40 years,
Indian Inhabitant, residing at Govind
Bhuvan, Mota Mandir, 3rd Bhoiwada,
Bhuleshwar, Mumbai-400002.

28. Goswami Shri Rajji alias Rajkumar
Nrutyagopalji or Rajkumar N. Goswami,
son of Goswami Nrityogopalji Krishnajivanji
Maharaj, aged about 34 years,
Indian Inhabitant, residing at Govind
Bhuvan, Mota Mandir, 3rd Bhoiwada,,
Bhuleshwar, Mumbai-400002.

29. Smt.Shobhaji M. Sharma,
daughter of Goswami Nrityogopalji
Krishnajivanji Maharaj, aged about 63 years,
Inhabitant, residing at Govind
Bhuvan, Mota Mandir,
3rd Bhoiwada, Bhuleshwar,
Mumbai-400002.

30. Goswami Smt.Kusumprabha Dwarkadhishji,
alias Kusumprabha D. Goswami, widow
of late Goswami Dwarkadhishji Krishnajivani,
aged about 68 years,
Inhabitant, residing at Govind
Bhuvan, Mota Mandir,
3rd Bhoiwada, Bhuleshwar,
Mumbai-400002.

31. Shri Yogesh Kumar, alias,
Goswami Shri Yogeshkumarji, or
Yaduraiji Dwarkadhishji, son of
late Goswami Dwarkadhishji
Krishnajivani, aged about 48 years,
Indian Inhabitant, residing at Trinity,

2nd Floor, Flat No.C, 206, Shankar
Gali, Kandivali (W), Mumbai

32. Goswami Shri Kamleshkumar alias
Kamleshkumarji Dwarkadhishji, son
of late Goswami Dwarkadhish Krishnajivanji,
aged about 40 years,
Indian Inhabitant, residing at Sanskriti,
Building No.18, Flat No.103, 90 Ft. Road,
Thakur Complex, Kandivali (E),
Mumbai.

33. Smt.Madhavi Sharma, alias
Madhaviji Rajshekhar Sharma,
daughter of late Goswami Shishukrishnaji
alias Dwarkadhishji Krishnajivani,
aged about 47 years, Indian
Inhabitant, residing at B-506, Kairali
Apartments, Sector-3, Plot No.10,
Dwaraka, New Delhi-110 075.

34. Smt.Niharika V. Goswami alias
Goswamini Ninuji Dwarkadhishji or
Milcharika V. Goswamini,
daughter of late Goswami Shishukrishnaji
alias Dwarkadhishji Krishnajivani,
aged about 44 years, Indian Inhabitant,
residing at 16-Vishweshwaraia Nagar
Vistaar, Gopalpura By pass Road,
Jaipur-302 018.

35. Goswami Shri Ramesh Gopinathji,
son of late Goswami Gopinathji Gokulnathji
Maharaj, aged about 60 years, Indian
Inhabitant, residing at ¾, Ambe Kripa
Society, Zaver Road, Mulund,
Mumbai.

36. Smt.Meeta Ramesh Goswami,
wife of said Goswami Ramesh Gopinathji,
aged about 56 years, Indian Inhabitant,
residing at ¾, Ambe Kripa Society,
Zaver Road, Mulund, Mumbai

37. Shri Paresh Ramesh Goswami,
son of said Goswami Ramesh Gopinathji,
aged about 38 years, Indian
Inhabitant, residing at ¾, Ambe Kripa
Society, Zaver Road, Mulund,
Mumbai.

38. Kum.Varsha Ramesh Goswami,
daughter of said Goswami Ramesh Gopinathji,
aged 29, Indian Inhabitant,
residing at ¾, Ambe Kripa Society,
Zaver Road, Mulund, Mumbai

39. Kum.Bindu Ramesh Goswami,
daughter of said Goswami Ramesh Gopinathji,
aged 27, Indian Inhabitant,
residing at ¾, Ambe Kripa Society,
Zaver Road, Mulund, Mumbai

40. Goswami Shri Rajkumar, alias
Rajendra Gopinathji, son of said
Gokulnathji Maharaj, aged about 55 years,
Indian Inhabitant, residing at Govind Bhuvan,
Mota Mandir, Bhoiwada, Bhuleshwar,
Mumbai-400002.

41. Smt.Rashmi ajkumar Goswami,,
wife of Rajkumar Gopinathji Goswami,
aged about 52 years, Indian Inhabitant,
residing at Govind Bhuvan, Mota Mandir,
3rd Bhoiwada, Bhuleshwar,
Mumbai-400002.

42. Shri Prashant Rajkumar Goswami,
son of said Rajkumar Gopinathji Goswami,
Murlimanoharji Vrajadhishji
aged about 32 years,
Indian Inhabitant, residing at Govind
Bhuvan, Mota Mandir, 3rd Bhoiwada,
Bhuleshwar, Mumbai-400002.

43. Smt.Shubhangi Prashant Goswami,,
wife of said Prashant Rajkumar Goswami,
aged about 24 years,
Indian Inhabitant, residing at Mota

Mandir, 3rd Bhoiwada, Bhuleshwar,
Mumbai-400002.

44. Shri Mandhar Rajkumar Goswami,
son of said Rajkumar Gopinathji Goswami,
aged about 25 years,
Indian Inhabitant, residing at Govind
Bhuvan, Mota Mandir, 3rd Bhoiwada,,
Bhuleshwar, Mumbai-400002.

45. Smt.Jyoti Rajaram Sharmak,
daughter of said late Goswami Gopinathji
Gokulnathji Maharaj, aged about 70 years,
Inhabitant, residing at Govind
Bhuvan, Mota Mandir,
3rd Bhoiwada, Bhuleshwar,
Mumbai-400002.

46. Smt.Pushpalata Mathureshji Goswami,
daughter of late Goswami Mathureshji
Gokulnathji Maharaj, aged about 73 yrs.
Indian Inhabitant, residing at
Balkrishna Mandir, Begum Bazaar,
Chatri Nagar Khana, Hyderabad

47. Smt.Neeta Mathureshji Goswami,
daughter of late Goswami Mathureshji
Gokulnathji Maharaj, aged about 51 yrs.
Indian Inhabitant, residing at
Govind Bhuvan, Mota Mandir,
3rd Bhoiwada, Bhuleshwar,
Mumbai-400002.

48. Smt.Hema N.Shastri,
daughter of late Goswami Mathureshji
Gokulnathji Maharaj, aged about 53 yrs.
Indian Inhabitant, residing at 125,
6th Cross , Gandhi Nagar,
Bangalore-560 009.

49. Goswami Smt.Poornima alias
Poornima M. Goswami, or
Purnima Vahuji Madhavraiji,
widow of Madhavraiji Gokulnathji Maharaj,
aged about 64 years, residing at
Govind Bhuvan, Mota Mandir,

3rd Bhoiwada, Bhuleshwar,
Mumbai-400 002.

50. Goswami Shri Niraj, alias
Neeraj M. Goswami, or
Neerajkumar Madhavraiji,
son of Madhavraiji Gokulnathji Maharaj,
aged about 46 years, residing at
Govind Bhuvan, Mota Mandir,
3rd Bhoiwada, Bhuleshwar,
Mumbai-400 002.

51. Smt.Shruti Nirajkumarji Goswami,
alias Shruti N.Goswami
wife of Goswami Neerajkumaqr Madhavraiji
Maharaj, aged about 42 years,
residing at Govind Bhuvan, Mota Mandir,
3rd Bhoiwada, Bhuleshwar,
Mumbai-400 002.

52. Goswami Shri Ambrish Kumarji
alias Govindraiji Shri Neerajkumar,
son of Goswami Neerajkumar Madhavraiji
Maharaj, aged about 22 years,
residing at Govind Bhuvan, Mota
Mandir, 3rd Bhoiwada, Bhuleshwar,
Mumbai-400 002.

53. Smt.P.Chandra Vallabhs, or
P.C.Vallabha alias Goswami
Smt.Gita or Vallabhaji Madhavraiji,
daughter of Madhavraiji Gokulnathji
Maharaj, aged about 48 years, residing
at B-1/24, Agrawal Tower, 6th
Floor, Bhuyander, Sola Road,
Ahmedabad-380061.

54. Smt.Chandravali Dixitji Goswami,
widow of late Goswami Dixitji Gokulnathji
Maharaj, Aged about 74 years,
Indian Inhabitant, residing at Govind
Bhuvan, Mota Mandir,
3rd Bhoiwada, Bhuleshwar,
Mumbai-400 n002.

55. Goswami Shri Uttamshlokji Dixitji,
son of late Goswami Dixitji Gokulnathji
Maharaj, aged about 58 years,
Indian Inhabitant, residing at Govind
Bhuvan, Mota Mandir, 3rd Bhoiwada,
Bhuleshwar, Mumbai-400 002.

56. Smt.Suman N.Shastri,
daughter of late Goswami Dixitji
Gokulnathji Maharaj, aged about
60 years, residing at Bramhaand,
E-3, G-4, Phase New 6, Azad Nagar,
Ghodbander Road, Thane(W).

57. Smt.Jailaxmi or Jaya or Jayalaxmiji
Telang, daughter of late Goswami
Dixitji Gokulnathji Maharaj, aged
about 54 years, Indian Inhabitant,
residing at B-2, A-4, Sector-A,
Berkheda Bhopal, Madhya Pradesh .. Respondents
(Orig.Defendants)

AND

1. Harikishan Bhattad

2. Harish R. Bhattad

3. Messers.Hari Construction

All three having their office at
104, Bajaj Bhavan, Nariman Point,
Mumbai-400 021.

Mr.E.P.Bharucha, Senior Counsel with Mr.M.P.S.Rao and Ms.Ruby Kerawala and Mr.Joel D'Souza i/by Mr.R.R.Kalekar for the appellants.

Mr.T.N.Subramanian with Mr.Navin Vimadalal and Mr.N.V.Walawalkar i/by M/s.Vimadalal & Co. for the respondents.

CORAM : R.M.LODHA AND
ANOOP V. MOHTA, JJ.

DATED : 23RD JANUARY, 2006

ORAL JUDGMENT (Per R.M.Lodha, J.)

This appeal arises from the order dated July 26, 2005, passed by the learned Chamber Judge in Chamber Summons No.452 of 2005 whereby the appellants who are original plaintiffs have been directed to implead (i) Harikishan R. Bhattad (ii) Harish R. Bhattad and (iii) Messrs Hari Construction as party defendants in the suit.

2. The appeal was admitted on 20th September, 2005 by the following order:-

"CORAM : DR.S.RADHAKRISHNAN, AND
S.C.DHARMADHIKARI, JJ.

DATED : 20th September 2005.

P.C.

Heard learned Counsel for appellants, respondents and applicants. Appeal is admitted, subject to issue of maintainability of appeal. Learned counsel for respondents waive service. Filing of paper book and printing dispensed with. Hearing expedited. Parties are at liberty to file additional compilation."

3. The newly added parties challenged the order dated 20th September, 2005 before the Supreme Court. By the order dated 16.12.2005, the Supreme Court disposed of the petition for special

leave to appeal by the following order:-

> "After hearing the learned counsel for the parties, we are of the opinion that the Division Bench of the High Court should determine the question of maintainability of the Letters Patent Appeal at the earliest and if possible dispose of the entire appeal by the next date fixed. We would request the High Court to take up the hearing of the matter within three weeks from the date of receipt of a copy of this order. In the meantime, Status-quo as regards possession so far as the petitioners before us are concerned, shall be maintained.
>
> The Special leave petitions are disposed of accordingly.

4. We heard the learned senior counsel and the learned counsel for the parties on the question of maintainability of the Letters Patent Appeal. After detailed hearing when the arguments in the appeal were almost over, Mr.M.P.S.Rao, the learned counsel for the appellants submitted that the appellants are not desirous of pressing the appeal. He submitted that the appellants may be permitted to withdraw the suit as well.

5. Mr.Subramaniam, the learned counsel for the newly added parties submitted that the appellants have obtained certain consent decrees against many defendants by perpetrating fraud and that the notice of motion No.3008 of 2005 has been taken out by the newly added defendants for setting aside the said consent decrees. He also submitted that the prayer for withdrawal of the suit is not bonafide.

6. Mr.M.P.S.Rao, the learned counsel for the appellants in response to the objection of Mr.T.N.Subrmaniam, submitted that the plaintiffs are not seeking any liberty to institute the fresh suit against the newly added defendants and, therefore, the opposition to the withdrawal of suit has no substance. He also submitted that as regards the notice of motion No.3008 of 2005 taken out by the newly added defendants for setting aside the consent decrees, the same shall be heard and disposed of by the learned Single Judge on its own merits.

7. The plaintiffs filed the suit for the specific performance of the contract and other incidental reliefs against 57 defendants. The first defendant Goswami Shrimad Gokulnathji Maharaj being Hindu undivided family was impleaded through its Karta and Manager Hariraji Krishnajivanji Maharaj. The defendant Nos.2 to 57 were impleaded being members/co-parsners of the first defendant.

8. It appears from the proceedings that the plaintiffs and the defendant Nos.2 to 29, 31 to 34, 45, 49 to 53 and 56 entered into mutual settlement and the consent terms were tendered on 29.1.2005. By the order dated 21st February, 2005, the learned trial Judge passed the decree in terms of consent terms as between the plaintiff and these defendants. The order dated 21st February, 2005 reads thus-

"CORAM : S.U.KAMDAR, J

DATED : 21st FEBRUARY 2005.

P.C.

1. The Plaintiffs and the defendant no.2 to 29,31 to 34,45,49 to 53 and 56 have tendered the Consent Terms dated 29.01.2005. The same is taken on record and marked `X' for identification. There shall be a decree in terms of Consent Terms as between the plaintiff and these defendants. The suit is against the defendant no.1,30,35 to 44,46 to 48,50 to 52,54 and 57 to proceed."

9. It would be, thus, seen that the suit thereafter continued only against defendant No.1,30,35 to 44,46 to 48,50 to 52,54,55 and 57.

10. The plaintiffs also seem to have settled the dispute amicably with defendant Nos.46 and 47. On 22nd March, 2005, the learned trial Judge passed the decree in terms of the consent terms against defendant Nos.46 and 47 and the suit against the other defendants was ordered to continue. The order dated 22nd March, 2005 reads thus-

"CORAM : S.U. KAMDAR, J.

DATED : 22nd MARCH, 2005

P.C.

Both the parties have filed consent terms between the plaintiffs and the defendant nos.46 and 47. The same is taken on record have tendered the Consent Terms dated 29.01.2005. The same is taken on record and marked `X' for identification. The suit is disposed of in terms of the consent terms against defendant nos.46 and 47. The suit against all other

defendants to continue."

10. The plaintiffs thereafter also settled the dispute with defendant Nos.54, 55 and 57 and consent terms were tendered on 13.6.2005. By the order dated June 13, 2005, the learned trial Judge disposed of the suit between the plaintiff and defendant Nos.54,55 and 57 in terms of the consent terms and ordered continuation of suit against the remaining defendants. The order dated June 13, 2005 reads thus-

"CORAM : A.M. KHANWILKAR, J.

DATED : JUNE 13, 2005

P.C.

Consent terms signed between Plaintiff and defendant Nos.54, 55 and 57 dated 13.06.2005 tendered taken on record. Parties have agreed for disposal of the suit in terms of consent terms interse

This order will dispose of the suit between Plaintiff and Defendant Nos.54, 55 and 57 in terms of the consent terms duly executed by the said parties and their advocates. Defendant Nos.55 and 57 are personally present in the court and have accepted the terms provided for in the consent terms. Defendant No.54 is not in a position to attend the court, as he is bed ridden. In the circumstances, presence of Defendant No.54 is dispensed with. The consent terms are taken on record on behalf of the said defendant. Suit disposed of between Plaintiff and defendant Nos.54, 55 and 57 only in terms of the consent terms. In other words suit between Plaintiff and defendant Nos.1, 30, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 48 shall continue in accordance with Law."

11. Thus, the suit remained pending against defendant Nos.1, 30, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 48 only.

12. In the meanwhile, it appears that on 1st April, 2005, the applicants 1, 2 and 3 took out the chamber summons for their impleadment. The said chamber summons, as indicated above, came to be disposed of by the impugned order directing the plaintiffs to implead these applicants as defendants.

13. Now since the appellants-plaintiffs are withdrawing the appeal, it is not necessary to go into the question of maintainability of the appeal and merits of the order directing the impleadment of three applicants as defendants. The order of impleadment, accordingly, stands and the plaintiffs are directed to carry out the amendment in the plaint immediately.

14. The learned counsel for the appellants-plaintiffs also prayed for withdrawal of the suit. We initially thought of directing the plaintiffs to apply to the learned trial Judge for withdrawal of the suit but on second thought formed the opinion that the plaintiffs may be permitted to withdraw the suit . The newly added defendants, obviously, do not have justification in opposing the withdrawal when no liberty is sought for institution of the fresh suit against them and the notice of motion taken out by them for setting aside the consent decree shall be decided by the learned motion Judge on its own merits.

16. We, accordingly, pass the following order:-

(i) The appeal is allowed to be withdrawn.

(ii) Upon withdrawal of the appeal, we clarify that the

impugned order dated July 26, 2005 stands and that the plaintiffs shall carry out the necessary amendment in the cause title as per the order dated July 26, 2005 immediately.

(iii) The plaintiffs are permitted to withdraw the suit against defendant Nos.1, 30, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 48 as well as the newly added defendants.

(iv) We record that as regards other defendants, the suit already stands disposed of by the orders dated 21st February, 2005, 22nd March, 2005 and June 13, 2005.

(v) It is clarified that withdrawal of the suit shall not affect in any manner the notice of motion No.3008 of 2005 taken out by the newly added defendants and the said notice of motion shall be decided on its own merits by the learned motion Judge.

All contentions of the parties in support and in opposition to the notice of motion are kept open to be agitated before the learned motion Judge.

For a period of four weeks, status-quo as regards the possession that was ordered to be maintained by the Supreme Court in the order dated 16.12.2005 shall continue to operate.

(R.M.LODHA, J.)

(ANOOP V. MOHTA, J.)